

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

)
Encap, LLC, v. The Scotts Company)
LLC)
_____)

Appeal No. 2015-1008

**DIRECTOR’S UNOPPOSED MOTION
TO ENLARGE THE TIME FOR FILING THE DIRECTOR’S BRIEF**

The Director of the United States Patent and Trademark Office, pursuant to Fed. Cir. R. 26, requests that the time for filing the Director’s Brief in the above-captioned appeal, now due March 2, 2015 be extended 42 days to April 13, 2015. This is the Director’s first request for an enlargement of time in this case.

Counsel for the Director requests this enlargement because extraordinary circumstances exist for this motion. The Director was informed yesterday, February 26, 2015, that the parties have settled and will file notice of settlement with the Court on or before March 2, 2015, stating, *inter alia*, that as part of the settlement agreement The Scotts Company will withdraw from this appeal. However, Encap’s counsel informed the Director today, February 27, 2015, that it will continue to pursue the appeal against the USPTO.

The USPTO intervened in this appeal primarily to defend the Patent Trial and Appeal Board’s regulations and practices regarding motions to amend. But for the

settlement, the USPTO's brief would have been limited to responding to Encap's arguments regarding the Board's denial of its motion to amend. Now, with the settlement, the USPTO will provide a full defense of the Board's decision on the merits.

Counsel for Appellant was contacted on Friday, February 27, 2015, and stated that he does not oppose this request for enlargement of time.

This motion is accompanied by a declaration and a proposed Order.

Dated: February 27, 2015

Respectfully submitted,

/s/ FARHEENA Y. RASHEED
NATHAN K. KELLEY
Solicitor

FARHEENA Y. RASHEED
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United States Patent and Trademark Office

**UNITED STATES COURT OF APPEALS
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ORDER

Upon consideration of the Director's Unopposed Motion for a 42-day
enlargement of time, it is

ORDERED that the Director's motion is granted and that the Director's
Brief is due on April 13, 2015.

FOR THE COURT

Date: _____

Admiral Daniel E. O'Toole
Clerk,
United States Court of Appeals
For the Federal Circuit

cc: Nathan K. Kelley
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Attorney for Appellant

**UNITED STATES COURT OF APPEALS
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Appeal No. 2015-1008

**DECLARATION IN SUPPORT OF DIRECTOR'S UNOPPOSED
MOTION TO ENLARGE THE TIME
FOR FILING THE DIRECTOR'S BRIEF**

1. I am the principal attorney assigned to work on this case.
2. I believe extraordinary circumstances exist for the extension. The Director was informed on February 26, 2015, that the above parties have settled and will file such a notice with the Court. As per the settlement, The Scotts Company will withdraw from this appeal. However, Encap's counsel informed the Director today, February 27, 2015, that it will continue to pursue the appeal against the United States Patent and Trademark Office.
3. The Director initially intervened in this appeal to defend the Patent Trial and Appeal Board's regulations and practices regarding motions to amend, and the Director's brief would have been limited to those arguments absent the settlement. Now, with the settlement, the Director will provide a full defense of the Patent Trial Appeal Board on the merits.
4. Counsel for Encap has stated that he does not oppose the Director's motion for a 42-day enlargement of time.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 27, 2015

/s/ Farheena Y. Rasheed
Farheena Y. Rasheed
Associate Solicitor

CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2015 I electronically filed the foregoing MOTION TO ENLARGE TIME with the Court's CM/ECF filing system, which constitutes service, pursuant to Fed. R. App. P. 25(c)(2), Fed. Cir. R. 25(a), and the Court's Administrative Order Regarding Electronic Case Filing 6(A) (May 17, 2012).

/s/ Farheena Y. Rasheed

Farheena Y. Rasheed

Associate Solicitor

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